

investment company, any investment adviser thereof.

3. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

4. Applicants believe that they may not rely on rule 17a-8 in connection with the Reorganization, because an affiliate of NAS, Nationwide Life Insurance Company, directly or through its separate accounts, owns, controls or holds the power to vote 5% or more of the outstanding voting securities of each of NIF's Nationwide Growth Fund, Nationwide Fund, Nationwide Bond Fund, Nationwide Money Market Fund, and NIF II's Nationwide U.S. Government Income Fund, and FHIT's Growth fund and Cash Reserve Fund. Applicants assert that NIF, NIF II, FHIT and each of the respective Acquired Series may be an affiliated person of Nationwide Life Insurance Company under section 2(a)(3)(B) of the Act.

5. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned; and the proposed transaction is consistent with the general purposes of the Act.

6. Applicants submit that the Reorganization satisfies the standards of section 17(b). Applicants believe the terms of the Reorganization are fair and reasonable and do not involve overreaching. Applicants state that the exchange is based on the relative net asset values of the relevant Funds' shares, and no sales charge will be incurred by shareholders of the Acquired Series in connection with their acquisition of corresponding Acquiring Series Shares. Applicants assert that the Reorganization is consistent with the investment objectives of the Acquired Series and the corresponding Acquiring Series.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-3929 Filed 2-17-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23014A; 812-10908]

The Sessions Group, et al., Notice of Application

January 30, 1998.

Correction

In FR Document No. 98-2883 beginning on page 5976 for Thursday, February 5, 1998, the date of the release was incorrectly stated. The correct date should be as set forth above.

Dated: February 11, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-3933 Filed 2-17-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39631; File No. SR-AMEX-97-37]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Relating to Expansion of Designated Options Areas

February 9, 1998.

I. Introduction

On October 14, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to expand the locations where options on Amex-listed stocks may trade at the Exchange. The proposed rule change was published for comment in the *Federal Register*.³ No comments were received on the proposal. On January 14, 1998, the Amex filed an amendment to the proposed rule change ("Amendment No. 1"),⁴ The Commission hereby approves the proposal. In addition, the Commission is publishing this notice to solicit comments from interested persons on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 39306 (November 6, 1997), 62 FR 61154 (November 14, 1997).

⁴ Letter from Scott G. VanHatten, Legal Counsel, Derivative Securities, Amex, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, Commission, dated January 13, 1998.

Amendment No. 1 to the proposal and hereby approves that amendment on an accelerated basis.

II. Description of the Proposal

In 1988, the Commission approved an Amex proposal to permit options trading on Amex-listed stocks ("1988 Approval Order").⁵ In that order, the Commission noted that: "[W]ith the expansion of its trading facility, specifically the addition of a separate trading room, the Amex is in a position to trade stocks and options thereon in physically separated locations. The proposed rule change specifies that such trading shall take place at different trading locations and provides the safeguards necessary to prevent abuses which could result from the trading of stocks and related options in physical proximity to each other."⁶

More recently, in 1994, the Commission approved an Amex proposal to provide greater flexibility in the design and development of new stock index option products which can be listed and traded on Amex.⁷ In that approval order, the Commission based its approval in part on the fact that Amex imposed a number of restrictions on trading in options on indexes. For instance, where Amex-listed stocks comprise more than 10% of the value of a particular index, options on that index must be traded in a *room physically separated from the Equity Floor*.⁸

Now, Amex, as a result of increases in trading volume in options on the Exchange,⁹ has proposed to relax the requirement that Amex-listed stocks and options on Amex-listed stocks be traded in a room physically separated from the Main Trading Floor

Background

Amex currently has three trading locations: (1) the Main Trading Floor; (2) the mezzanine trading level, which is located above the Exchange's main trading floor ("Mezzanine"),¹⁰ and (3) a separate room connected by a hallway to the Main Trading Floor (the "Red Room" or "Designated Options Area").

⁵ Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988) (File No. SR-AMEX-88-16).

⁶ *Id.*

⁷ Securities Exchange Act Release No. 34359 (July 12, 1994), 59 FR 36799 (July 19, 1994).

⁸ *Id.* (emphasis added).

⁹ The Amex noted in its filing that the number of options on Amex-listed stocks has increased slowly, to 45 classes since 1988, while the overall number of options classes traded on the Exchange has increased over 350% since that time.

¹⁰ The Mezzanine abuts and overlooks the Exchange's equity trading floor. See Release No. 34-34359 at n. 8.

On the Main Trading Floor, Amex currently permits trading in:

- (1) Amex-listed stocks,
- (2) Options on non-Amex-listed stocks, and
- (3) Options on indexes (excluding options on indexes where Amex-listed stocks comprise more than 10% of the index value, by weight).¹¹

In the Red Room, Amex currently permits trading in:

- (1) Options on Amex-listed stocks,
- (2) Options on non-Amex-listed stocks, and
- (3) Options on indexes where Amex-listed stocks comprise more than 10% of the index value, by weight.

On the Mezzanine, Amex currently permits trading in:

- (1) Options on indexes where Amex-listed stocks comprise more than 10% of the index value by weight, and
- (2) Options on non-Amex-listed stocks.

Consistent with the 1988 Approval Order, as described above, trading of Amex-listed stocks occurs on the Main Trading Floor, while trading of options on Amex-listed stocks is permitted only in the Red Room. The Exchange states that the capacity of the Red Room is no longer sufficient to accommodate all trading in options on Amex-listed stocks. The Exchange represented in its filing that while the number of options on Amex-listed stocks has increased slowly, to approximately 45 classes since 1988, the overall number of option classes traded on the Exchange has increased over 350% since that time. As a result of this increase in classes of options traded at the Amex, the Exchange states that it currently lacks flexibility in moving trading units around its trading floors. Those specialist units currently trading options on Amex-listed stocks are forced to remain in the Red Room, even though they have outgrown their space, or face giving up those classes to move to larger quarters. Moreover, the Exchange represented that specialist units that currently do not trade any options on Amex-listed stocks are unable to do so because there is no room left in the Red Room. The increase in classes of options traded on the Exchange and the Exchange's need for flexibility in moving the various trading units around the Exchange's trading

floors has made it necessary for the Exchange to find additional physically separate locations for trading options on Amex-listed stocks.

Accordingly, the Exchange has proposed to permit options trading on Amex-listed stocks in two locations of the Exchange in addition to the Red Room: (1) The Mezzanine and (2) the back row of the west side of the Exchange's Main Trading Floor, also referred to as the west side of Exchange Posts 12, 13 and 15 ("Back Row").

The Exchange represented in its filing that the two locations selected would keep options and equity trading sufficiently separate such that there can be no time and place advantage derived from the proximity of the equity and options trading areas.¹² The Exchange contends that permitting the trading of options on Amex-listed stocks on the Mezzanine is consistent with the Commission's approval of the Mezzanine as a physically separate trading location with respect to trading in stock index options. For options on Amex-listed stocks traded on the Mezzanine, the Exchange represents that: (1) Options on Amex-listed stocks shall not be traded in the portion of the Mezzanine that is visible from the Main Trading Floor; (2) members will be prohibited from using hand signals or other like means of communication to communicate between the Mezzanine and the Main Trading Floor; and (3) members will be notified in writing by the Exchange of the new prohibitions on the use of hand signals or other like means of communication.

With respect to the Back Row trading location, the Exchange contends that it will be able to keep options and equity trading sufficiently separate to avoid the time and place advantage that could result from the proximity of the equity and options trading area. Specifically, the Exchange represents that no option on an Amex-listed equity will trade at any post on the Exchange's Main Trading Floor where there exists a direct line of sight between the posts of the option and its corresponding underlying equity. In addition, for options on Amex-listed stocks traded at the Back Row of the Main Trading Floor: (1) Those options shall remain separate from their corresponding underlying equities by no less than one row of posts on the Main Trading Floor; (2) members will be prohibited from using hand signals or other like means of communication to communicate between the Back Row and the Main

Trading Floor; and (3) members will be notified in writing by the Exchange of the new prohibitions on the use of hand signals or other like means of communications.

The Exchange believes that the proposed rule change will not increase the potential for trading abuse and manipulation as there is no line of sight between the Mezzanine and the Back Row and the Designated Stock Area, which will now constitute those areas of the Main Trading Floor other than the Back Row. Thus, no time or place advantage should result from the proposed rule change.

In addition to the above representations, the Exchange states that it has in place various safeguards to detect and prevent any such abuse or manipulation. For instance, the Exchange notes that options on Amex-listed stocks and the underlying Amex-listed stocks will continue to be deemed "paired securities," (as that term is used in the Exchange's Series 900 rules).¹³ This designation invokes additional safeguards designed to prevent the misuse of market information and market manipulation by Amex members. These safeguards include Amex Rule 175, which generally prohibits someone from acting as a specialist in an equity and in the option on the equity.

In addition, Amex Rule 958(e) prohibits any equity specialist, odd-lot dealer or Nasdaq market maker from acting as a registered trader in a class of stock options on a stock in which he is registered in the primary market place. Moreover, Rule 958(f) prohibits any member, while acting as a Registered Options Trader ("ROT"), who is also registered as a Registered Equity Trader or Registered Equity Marketmaker, from executing a proprietary Exchange option transaction on a paired security if he has been in the Designated Stock Area (*i.e.*, the Main Trading Floor) where the related security is traded during the preceding 60 minutes.

To ensure compliance with the above safeguards, the Exchange states that it has in place various surveillance procedures. The Exchange's surveillance procedures, which are set forth at Section XI, C of the Amex Trading Analysis Options Surveillance Manual concerning Paired Security Review, include, among other items, the preparation of daily activity reports on ROTs' trading activity in Amex-listed stocks and options. These reports are

¹¹ An index can be valued using a number of different methods. For example, an index can be valued by determining: the price of the components of the index (price-weighting); the number of shares of each component that could be purchased by spending equal dollar amounts (equal dollar-weighting); and the market capitalizations of the components of the index (capitalization-weighting). *Cf.* Release No. 34-34359 at n. 7 and accompanying text.

¹² Securities Exchange Act Release No. 39306 (November 6, 1997), 62 FR 61154 (November 14, 1997).

¹³ The term *paired security* means a security which is the subject of securities trading on the Exchange and Exchange option trading. Amex Rule 900(b)(38).

used to analyze ROT trading activity to ensure compliance with Amex Rule 958.

Lastly, the Exchange states that it will continue to follow the restrictions the Exchange imposed in its proposal regarding trade in index options as discussed in Securities Exchange Act Release No. 34359,¹⁴ which addresses, among other items, the locations where it is permissible to trade options on indexes where Amex-listed stocks comprise more than 10% of the index value by weight.¹⁵

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and with the requirements of Section 6 of the Act.¹⁶ In particular, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act in that it should remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and protect investors and the public.¹⁷ The Commission believes that the Amex has provided adequate safeguards to protect against market manipulation and abuse of market information in this context. The Commission also believes that the proposal will allow the Exchange flexibility in moving trading posts while minimizing the potential for abuse by ensuring that Amex traders will not be able to obtain unfair informational advantages.

In considering this filing, the Commission notes that floor traders and market makers, by virtue of their close proximity to the trading crowds and access to market information, may have a time and place advantage over other market participants. For example, floor traders in the crowd may be able to gain an insight into the future direction of the market on the basis of, among other

things, the other traders in the crowd and their bidding/offering patterns. Likewise, market makers have an informational advantage about order flow and quote changes. For the reasons stated below, however, the Commission believes that the restrictions contained in the Amex proposal adequately minimize any potential for misuse of information or market manipulation. The Commission concurs with the Exchange's view that the trading locations for equities and options on equities are sufficiently separated in a manner that will minimize the time and place advantage that can be derived from the proximity of the equity and options trading areas. Specifically, for options on Amex-listed stocks traded on the Mezzanine, the Exchange has represented that: (1) Those options shall not be traded in the portion of the Mezzanine that is visible from the Main Trading Floor, and (2) members will be prohibited from using hand signals or other like means of communication to communicate between the Mezzanine and the Main Trading Floor. For options on Amex-listed stocks traded at the Back Row of the Main Trading Floor: (1) Those options shall remain separate from their corresponding underlying equities by no less than one row of posts on the Main Trading Floor, and (2) members will be prohibited from using hand signals or other like means of communication to communicate between the Back Row and the Main Trading Floor. Members will be notified in writing by the Exchange of the new prohibitions on the use of hand signals or other like means of communications.

By restricting the trading of options to areas outside the visibility of trading of the underlying securities, the Commission believes the proposal adequately limits the ability of Amex members to unfairly use any material, nonpublic information they might possess. Moreover, the Commission believes that current surveillance procedures are adequate to identify and deter potential manipulations and other trading abuses. Finally, by prohibiting hand signals and other forms of communication between options and equity trading posts on the Main Trading Floor, the Mezzanine, and the Back Row, the Exchange should be able to significantly restrict abuses.

The Commission's approval of the proposed rule change is premised on the belief that the Amex's proposed trading locations for equities and options are sufficiently separated such that there is no time and place advantage derived from the physical proximity of the two trading locations which could be exploited by Amex members.

Accordingly, any decision by the Amex to change the location of the designated options area relative to the designated stock area, or to modify the means of access between them, would require submission of a proposed rule change under Section 19(b) of the Act.

Based on the foregoing, the Commission believes that the proposal will allow the Exchange to expand the trading locations for options on Amex-listed stocks while providing adequate protections against market participants that might attempt to manipulate the market or misuse any market information, which results from the trading of options and the stocks underlying those options in physical proximity to each other.

The Commission finds good cause consistent with the Act for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 simply provides additional details regarding, among other things, where options and stocks are currently traded at the Amex and does not substantively change the proposal as originally filed. Accordingly, the Commission approves Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments, including whether the submission is consistent with the Act, concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-AMEX-97-37 and should be submitted by March 11, 1998.

¹⁴ *Id.*

¹⁵ *Id.* Among other items, the Exchange represented that: First, index options trading shall not be located on the Exchange's Main Trading Floor; and second, for index options traded on the Mezzanine where Amex-listed stocks comprise more than 10% of the value of the index, by weight: (1) Those options shall not be traded in the portion of the Mezzanine that is visible from the Main Trading Floor, and (2) members will be prohibited from using hand signals or other forms of communication to communicate between the Mezzanine and the Main Trading Floor. Securities Exchange Act Release No. 34359 (July 12, 1994), 59 FR 36799 (July 19, 1994).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-AMEX-97-37), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-3996 Filed 2-17-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39643; International Series Release No. 1114; File No. 601-01]

Self-Regulatory Organizations; Morgan Guaranty Trust Company of New York, Brussels Office, as Operator of the Euroclear System; Order Approving Application for Exemption From Registration as a Clearing Agency

February 11, 1998.

I. Introduction

On March 5, 1997, Morgan Guaranty Trust Company of New York ("MGT"), Brussels office ("MGT-Brussels"), as operator of the Euroclear System¹ pursuant to a contract with Euroclear Clearance System Société Coopérative, a Belgian cooperative ("Belgian Cooperative"),² filled with the

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ For purposes of this order, the term "Euroclear" refers to MGT-Brussels in its capacity as operator of the Euroclear System. MGT-Brussels is the Brussels branch of MGT that has acted as the operator of the Euroclear System through its Euroclear Operations Centre since the creation of the Euroclear System in 1968. The Euroclear Operations Centre is a separate, independent operational unit established within MGT-Brussels to operate the Euroclear System.

In 1972, a package of rights described as the Euroclear System was sold to Euroclear Clearance System Public Limited Company, and English limited liability company ("ECS-PLC"). ECS-PLC purchased the rights to receive the revenues generated by the Euroclear System services, to approve participants, to determine eligible securities, to establish fees, and to make other similar decisions. MGT-Brussels retained all of the assets and means necessary to operate the Euroclear System and granted a license to ECS-PLC to use the Euroclear System trademarks.

² The Belgian Cooperative was established in 1987 to further facilitate communication between Euroclear and the international securities industry and to encourage participation in the Euroclear System. It received a license from ECS-PLC to exercise some of ECS-PLC's rights as owner of the Euroclear System. Neither ECS-PLC nor the Belgian Cooperative is an operating company. Among other things, MGT-Brussels maintains all Euroclear System participant accounts on its own books, maintains all of the contractual relationships with Euroclear System participants and Euroclear System depositories in its own name, and provides all of

Securities and Exchange Commission ("Commission") an application on Form CA-1³ for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 ("Exchange Act")⁴ and Rule 17ab2-1 thereunder.⁵ Notice of MGT-Brussels' application was published in the **Federal Register** on May 15, 1997.⁶ Six comment letters were received in response to the notice of filing of the Euroclear application.⁷ This order grants the application of MGT-Brussels, as operator of the Euroclear System, for exemption from registration as a clearing agency to the extent the Euroclear System performs the functions of a clearing agency with respect to transactions involving U.S. government and agency securities for its U.S. participants subject to the conditions and limitations that are set forth below.

II. Description of Euroclear System Operations⁸

Euroclear provides several services to its participants, including securities clearance and settlement, securities custody and borrowing, and securities

the personnel, systems, trademarks, and operational capability used to deliver the Euroclear System services to Euroclear System participants. For a more complete description of the structure of the Euroclear System, refer to Section II of the Euroclear notice, *infra* note 6.

³ Copies of MGT-Brussels' application for exemption ("Euroclear application") are available for inspection and copying at the Commission's Public Reference Room (File No. 601-01).

⁴ 15 U.S.C. 78q-1.

⁵ 17 CFR 240.17Ab2-1.

⁶ Securities Exchange Act Release No. 38589 (May 9, 1997), 62 FR 26833 (notice of filing of application for exemption from registration as a clearing agency) ("Euroclear notice").

⁷ Letters from C.R. Trusler, Director, Nomura International plc (June 5, 1997); S. Guenzi, Senior Products Manager Custody H.O.—Financial Institutions, Credito Italiano (June 12, 1997); Harvé Pennanech'h, Head of Back-Office, Capital Markets Division, Société Générale (June 16, 1997); D.G. Pritchard, Director, Global Collateral Support Unit, NatWest Markets (June 16, 1997); Preben Borup, Senior Vice President, BG Operations, and Tom Jensen, First Vice President, Head of Custody and Settlement, BG Operations, Bikuben Girobank A/S (June 17, 1997); and S.L. Richardson, Executive Manager, Operations, ANZ Bank (June 18, 1997). The comment letters for File No. 601-01 are available for inspection and copying in the Commission's Public Reference Room.

⁸ A more complete description of Euroclear System operations is contained in the Euroclear notice, *supra* note 6.

⁹ The contractual relationship between Euroclear and its participants is defined by the Terms and Conditions Governing the Use of Euroclear ("Terms and Conditions") as supplemented by Supplementary Terms and Conditions Governing the Lending and Borrowing of Securities through Euroclear ("Supplementary Terms and Conditions"), the Operating Procedures of the Euroclear System ("Operating Procedures"), and various other documents, all of which are governed

A. Securities Clearance and Settlement

The Euroclear System functions as a clearance and settlement system for internationally traded securities. Securities settlement through the Euroclear System can occur with other participants in the Euroclear System ("internal settlement"), with members of Cedel Bank, société anonyme, Luxembourg ("Cedel"), the operator of the Cedel system ("Bridge settlement"), or with counterparties in certain local markets that are not members of either the Euroclear System or Cedel ("external settlement").

The annual volume of transactions settled in the Euroclear System has grown from about US\$3 trillion in 1987 to over US\$34.6 trillion in 1996. The fastest growing segments of this activity have been repurchase and reverse repurchase agreements ("repos"), book-entry pledging arrangements, securities lending, and other collateral transactions¹⁰ involving non-U.S. government securities.¹¹ Although the individual certificated or uncertificated government securities of these countries are immobilized or dematerialized with the central banks or central securities depositories ("CSDs") in their home markets, book-entry positions with respect to such securities can be acquired, held, transferred, and pledged by book-entry on the records of Euroclear in any of the 35 currencies available in the Euroclear System because of the links to local custodian banks, central banks, CSDs, and national payment systems around the world.

1. Internal Settlement: Clearance and Settlement of Trades Between Euroclear System Participants

Transactions between Euroclear System participants in the Euroclear System can be settled either against payment or free of payment.¹² Upon

by Belgian law. Among other things, the Terms and Conditions provide that Euroclear participants agree that their rights to securities held through the Euroclear System will be defined and governed by Belgian law.

¹⁰ Collateral transactions are designed to enable Euroclear System participants to reduce their financing costs, increase their yields on securities, reduce their credit and liquidity exposures, and to manage market and operational risks.

¹¹ Government securities of the following countries are currently eligible for clearance and settlement in the Euroclear System: Argentina, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hong Kong, Ireland, Italy, Malaysia, Mexico, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, Thailand, and the United Kingdom.

¹² When a securities transaction is settled "against payment," movement of the securities is made in return for a corresponding payment, usually cash. When a securities transaction is settled "free of payment," movement of the securities is made